



**The Comptroller General
of the United States**

Washington, D.C. 20548

Gilbert

Decision

Matter of: Axelrod Publishing of Tampa Bay

File: B-226934

Date: July 6, 1987

DIGEST

1. Protest against alleged lack of time to consider agency's response to questions about the solicitation is untimely when the response was received 2 working days before the closing date for receipt of proposals and the protest was filed after the closing date. Protester's oral complaint to agency before proposal due date did not constitute timely agency protest since oral protests are not provided for under the Federal Acquisition Regulation.
2. Agency may not consider in its competitive range determination proposal modifications submitted after closing date for receipt of initial proposals when none of the exceptions to the rule against considering late proposals or modifications to late proposals applies.

DECISION

Axelrod Publishing of Tampa Bay protests rejection of its proposal as technically unacceptable under request for proposals (RFP) No. 200-87-0527(P), issued by the Centers for Disease Control Department of Health & Human Services (HHS), for developing, producing and marketing public service advertising materials aimed at keeping the issue of the hazards of tobacco use before the public. Axelrod contends that HHS did not provide it with information it had requested about the RFP in adequate time for it to prepare its proposal, and that HHS should have accepted its proposal modifications which would have corrected any deficiencies in its proposal.

We dismiss the protest in part and deny it in part.

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By letter dated March 10, 1987, and received by HHS on March 13, 1987, Axelrod requested information regarding the RFP. HHS mailed the requested information to Axelrod on March 24, 1987. Axelrod received the information on March 27, 2 working days before the March 31, 1987, closing date for receipt of proposals. Axelrod contends that delivery of the requested information 2 working days before the RFP's closing date did not allow it sufficient time to consider HHS' response and prepare a complete proposal.

We dismiss this aspect of Axelrod's protest as untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), require that a protest based on an alleged solicitation impropriety, as here, must be filed either with the procuring agency or our Office prior to the closing date for the receipt of initial proposals. See Conner Building Maintenance, Inc., B-221301, Jan. 15, 1986, 86-1 CPD ¶ 51. Since Axelrod did not protest to our Office until May 1, 1987, well after the March 31, 1987, closing date, its protest on this issue is untimely and will not be considered.

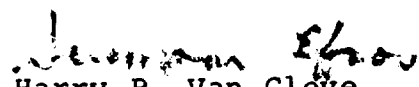
Although Axelrod contends it complained in a conversation with the contracting specialist prior to the closing date about the lack of time to prepare its proposal, the firm's oral complaint to the contracting agency did not constitute a protest such that a subsequent protest to our Office would be timely. Oral protests are not provided for under the Federal Acquisition Regulations, (FAR), 48 C.F.R. § 33.101 (1986). Arctic Energies Ltd., B-224672, Nov. 17, 1986, 86-2 CPD ¶ 571.

Axelrod contends that modifications to its proposal which it submitted on April 1 and April 4, before a competitive range determination had been made, and which the contracting officer returned without action because they were late, should have been accepted by HHS.

An agency may consider a proposal or a modification to a proposal that is received after the date required in the solicitation only if one of the exceptions to the rule against considering late proposals or late modifications to proposals applies. See MacGregor Athletic Products, B-211452, Sept. 23, 1983, 83-2 CPD ¶ 366. These exceptions do not contemplate the submission of an offer after the field of competition has been defined as of the specified date. See FAR, 48 C.F.R. § 52.215-10; see Design Data Systems, B-225718.2, Mar. 5, 1987, 87-1 CPD ¶ 253. Since Axelrod's situation does not fit within an exception to the

late proposal/modification rule, HHS properly refused to consider the late modifications. See The 3M Co., B-206317, Feb. 22, 1982, 82-1 CPD ¶ 158.

The protest is dismissed in part and denied in part.


Harry R. Van Cleve
General Counsel